IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 646 of 2001

in

SPECIAL CIVIL APPLICATIONNo 5976 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ANAND MUNICIPALITY

Versus

NAVJEEVAN PULSE MILLS

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Appearance:

MR GM JOSHI for Appellants
MR VB PATEL, SR. ADVOCATE FOR MR DEEPAK V PATEL
for Respondent No. 1
MS HARSHA DEVANI, AGP for Respondent No. 2

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CORAM : MR.JUSTICE R.K.ABICHANDANI
and

MR.JUSTICE JAYANT PATEL

Date of decision: 10/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. The appellants challenge the interim relief granted in terms of paragraph 12(B) of the petition filed by the respondents which reads as follows :

> "Pending the hearing and final disposal of this petition, Your Lordships be pleased to issue appropriate writ, order or stay order against the concerned respondents from taking possession of the land mentioned in the notice dated 2-5-2000 or taking any steps or proceedings in pursuance of the said notice Annexure `H', Annexure `I' and Annexure `EE'"

2. It was submitted by the learned counsel that the learned Single Judge had no jurisdiction to entertain the petition in view of the declaration sought in paragraph 12(AA) of the petition to the effect that the preliminary and final scheme as sanctioned by the State Government in relation to final plot No. 131 (85) were ultra vires, bad in law and unenforceable and that the proceedings adopted by the Town Planning Officer were without jurisdiction and contrary to the principles of natural justice. Referring to ground (J) of the petition, it was submitted that the challenge against the scheme was made on the ground that the scheme was violative of the fundamental and other rights of the appellants petitioners guaranteed by Article 14, 19 and 301A of the Constitution of India. It was submitted that the learned Single Judge has committed a jurisdictional error in his finding given in paragraph 9 of the impugned order while stating that the challenge, in substance, was a challenge not against the provisions of the statute and therefore, a Single Judge could entertain the petition and it need not be placed before a Division Bench, as was sought to be contended on behalf of the appellants. The learned counsel further submitted that the observation of the learned Single Judge in paragraph 9 that the matter was not being finally disposed of as stated by Rule 2 of the Gujarat High Court Rules, and therefore, it could be entertained by the learned Single Judge, was contrary to the Rules.

3. Rule 2 of the Gujarat High Court Rules, 1993 enumerates the matters which can be disposed of by a learned Single Judge of this Court. As stated in

sub-rule 10, the learned Single Judge can dispose of the applications under Article 226 of the Constitution of India, except those which are enumerated thereunder. Under clause (i) of sub-rule (10) of Rule 2, the applications under Article 226 where vires of any provision of a statute challenged, by a learned Single Judge.

4. The learned counsel for the appellants, referring to the provision of section 65(3) of the Gujarat Town Planning & Urban Development Act, 1976, submitted that since the preliminary scheme as well as the final scheme is required to be given effect as if it were enacted in the Act on and after the date fixed in the notification, any challenge against the scheme should be treated as a challenge against the statute. We are unable to subscribe to this view because the word `statute' as used in Rule 2(10)(i) of the High Court Rules has reference to a statute enacted by the Parliament or the State Legislature and it cannot mean to include subordinate legislation or even a scheme which is given the vigor of a provision enacted in the Act by a deeming fiction. A scheme enacted de hors the Act cannot be a part of the Act. Therefore, a scheme is ultra vires the Act i.e. the statute, it cannot be treated as if it is enacted in that statute. The word `scheme' as defined in section 3(xxvi) means a Town Planning Scheme prepared under the Act and therefore, a scheme de hors the Act is not contemplated to become part of the statute. On a plain reading of the provision of Rule 2 (10)(i) of the High Court Rules, we hold that the word `statute' appearing therein would mean only the Act enacted by the Parliament or the State Legislature and not any subordinate legislation or a scheme framed under the Act, which may have been given effect as if it were enacted in the Act. In other words, the word `statute' would mean an Act passed or enacted by a legislative body. We hold this only in the context of Rule 2(10)(i) of the High Court Rules for holding that the learned Single Judge was right in observing that since there was no challenge against any provision of the statute, he could entertain and dispose of the matter. Since the challenge is not against the statute within the meaning of Rule 2(10)(i), it is not necessary for us to finally decide the scope of the expression `dispose of' in Rule 2(1) which would ordinarily mean to entertain and dispose of.

5. Since the validity of the Town Planning Scheme sanctioned by the Government in relation to the final plot in question is challenged, the learned Single Judge while issuing `Rule' on the petition granted interim

relief after hearing both the sides and protected the possession of land which is with the respondents and which was sought to be disturbed by the impugned notices. We find no valid reason to interfere with the said order of interim relief granted by the learned Single Judge. We are told that the matter is already listed for final hearing and therefore, it is likely to be taken up in near future. The learned counsel for the respondents states that the respondents will not alienate or encumber in any manner the land in question which is covered by the interim relief granted in terms of paragraph 12(B) during the pendency of the petition. We accordingly direct that the interim relief which has been granted in terms of paragraph 12(B) by the learned Single Judge will be subject to this condition, namely, that the respondents will not dispose of or in any manner encumber the land in question covered by the interim relief during the pendency of the petition.

The appeal stands disposed of accordingly. Notice is discharged with no order as to costs.

DECEMBER 10, 2001 [R.K.ABICHANDANI, J.]

[JAYANT PATEL, J.]

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